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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1987

In re Lori G., a Person Coming Under the Juvenile Court Law.

JOAN G.,
Petitioner,

v.

ORANGE COUNTY SOCIAL SERVICES AGENCY,
Respondent.

On Appeal From the California Court of Appeal

PETITION FOR CERTIORARI

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100 pp.

QUESTIONS PRESENTED

Whether at the termination of parental rights proceeding brought against Petitioner, she was denied due process of law by the introduction of "hearsay" evidence which showed "problems" that in part, formed the basis of the trial court's decision to terminate her parental rights.

Whether at the termination of parental rights proceeding brought against Petitioner, she was denied the right to confront the witnesses against her by the introduction of "hearsay" evidence which showed "problems" that in part, formed the basis of the trial court's decision to terminate her parental rights.

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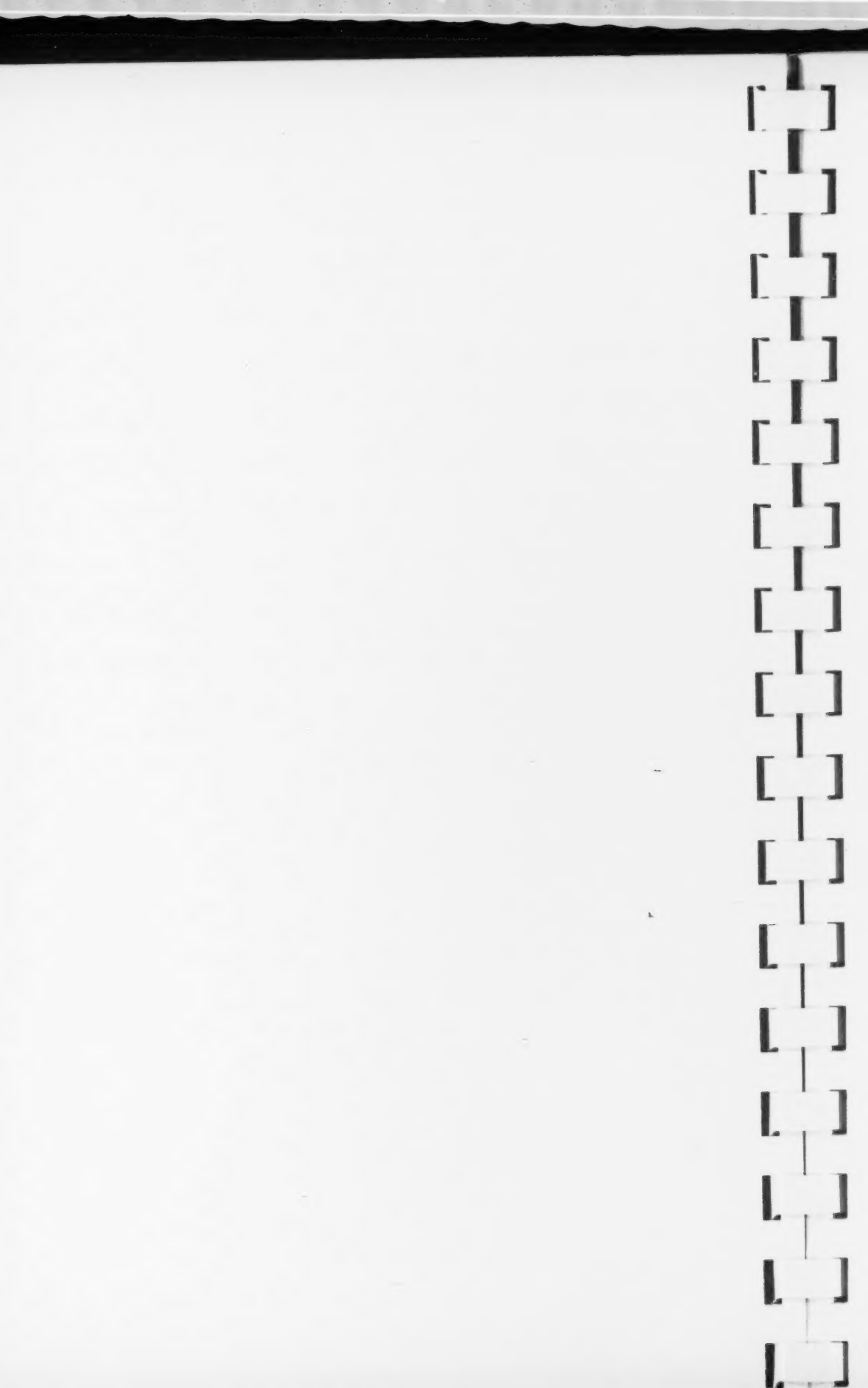

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THE SUPREME COURT OF THE UNITED STATES

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No. _____

In re LORI G., a Person
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JOAN G.,
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vs.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

To the Honorable, The Chief Justice and Associate Justices of the Supreme Court of the United States:

JOAN G., the Petitioner herein, prays that a Writ of Certiorari issue to review the judgment of the California Court of Appeal entered in the above entitled case on May 12, 1987.

QUESTIONS PRESENTED

Whether at the termination of parental rights proceeding brought against Petitioner, she was denied due process of law by the introduction of "hearsay" evidence which showed "problems" that in part, formed the basis of the trial court's decision to terminate her parental rights.

Whether at the termination of parental rights proceeding brought against Petitioner, she was denied the right to confront the witnesses against her by the introduction of "hearsay" evidence which showed "problems that in part, formed the basis of the trial court's decision to terminate her parental rights.

OPINIONS BELOW

The decree of the California Supreme Court denying Petition for Review

is unreported and is set out in Appendix, p. A-20. The decision of the California Court of Appeal is also unreported, and is set out in Appendix, p. A-1. The entry of judgment of the Superior Court of Orange County, California is set out in Appendix, p. A-21.

JURISDICTION

The judgment of the California Court of Appeal affirming the Superior Court's termination of Petitioner's parental rights was entered on May 12, 1987, Appendix, p. A-1.

On July 29, 1987, the California Supreme Court denied Petitioner's Petition for Review, Appendix, A-20.

The jurisdiction of the Supreme Court of the United States is invoked under 28 U.S.C. Section 1257(3).

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

This case involves California's statutory provision for termination of parental rights, Cal. Civ. Code Section 232 (Deering's, 1961, as amended), the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution, U.S. Const. Amends. 5, 6, 14. The text of these provisions is set out in the Appendix, p. A-24,25

STATEMENT OF THE CASE

A. Course of Proceedings In the Case Now Before This Court

On November 23 and 24, 1981, a hearing was held in Orange County Juvenile Court pursuant to Cal. Welf. & Inst. Code Section 300(d), to declare a minor, Lori G., hereinafter "Lori", a dependent child (R.3-32). The petition for dependency was based upon the allegation that Lori's mother, Joan G., hereinafter "Joan", the

respondent in that proceeding, was an unfit mother because on October 18, 1981, "Joan" was observed lying unclothed on top of the minor, her hips moving up and down, with the minor's mother insisting that the minor suck the mother's breasts; further, that medical examination of the minor revealed a slightly enlarged vaginal opening, a greenish discharge and a reddened vagina "(R.32).

Slightly over three years after Lori was declared to be a dependent child and placed in foster home, the petitioner in the original juvenile and Superior Court actions, the Orange County Social Services Agency, hereinafter the "agency", filed a "Petition for Freedom From Parental Control" pursuant to Cal. Civil Code Sections 232(a)(2)&(7) (R.1-3). Between November 26, 1985 and December 20, 1985, the Section 232 hearing was held in Orange

County Superior Court before Judge Myron S. Brown (R.72). At the Section 232 hearing, the agency called Joan and six other witnesses to wit: Teresa Hughes, a social worker with Orange County Social Services (T.131), Joan Podrow, a clinical social worker with Orange County Health Care Agency, Mental Health Services (T.171), Cheryl Kahle, a Senior Social Worker with Orange County Department of Social Services (T.216), Ronald Seaborn, a clinical psychologist for the evaluation and guidance unit of the Orange County Juvenile Court (T.272), and Dae Leckie, a licensed Social Worker and Psychotherapist.

In addition to the above noted live witnesses, the court took judicial notice of the juvenile court file, the agency case file, and the juvenile probation report (T.362).

Joan called ten witnesses including herself (T.362-547).

In rebuttal, the agency called a Robert Malmberg, a Senior Social Worker with the Orange County Social Services Agency, Adoptions Divisions (T.548).

Joan then called three rebuttal witnesses: Judy Davision, a children's worker with the adoptions division of Orange County Social Services (T.562), Lynn Manhart, a Senior Social Worker with Orange County Social Services (T.572), and Dae Leckie, one of the witnesses called by the agency in its case-in-chief.

Throughout the hearing, damaging statements made by out of court declarants were offered by agency allegedly to prove things other than the truth of the matter asserted, such as the basis of the opinion of an expert, or whether the agency

provided reasonable services to Joan or properly investigated Joan's case and developed an adequate case plan prior to the initiation of the Section 232 proceeding.

At the conclusion of the Section 232 proceeding, the court found all of the averments in the Section 232 hearing to be true, and ordered that Lori be freed from the control of her biological mother, Joan (R.72-74).

To that judgment Joan appealed, and on May 12, 1987, the Third Division of the Fourth District of the California Court of Appeal unanimously affirmed the judgment of the Superior Court. Appendix, p. A-1.

Joan subsequently petitioned the California Supreme Court for review of the decision of the Court of Appeal, and said

Petition for Review was subsequently denied on July 29, 1987. Appendix, p. A-20.

Joan now brings this Petition for Writ of Certiorari to this honorable court.

B. Relevant Facts Concerning the Termination of Parental Rights

The only facts from the record necessary for this Court's consideration on the underlying judgment terminating Petitioner's parental rights are: (1) in addition to the allegation that Petitioner had on one occasion sexually molested her child, the Petitioner in the original Superior Court termination proceeding, the Orange County Social Services Agency, through its own social workers, offered substantial hearsay evidence of factors upon which the court based its termination of Petitioner's Parental rights on, such as (a) petitioners failure to maintain a

stable residence (hearsay statements of former landlord asking Petitioner to leave her residence and other statements showing Joan's tenancy as tempestuous as well as statements describing Joan as dirty and a screamer.), (b) Petitioner's failure to maintain steady employment (hearsay statements of employer references given by Petitioner that she was not so employed or minimally employed with those persons), (c) hearsay statements of other persons that Petitioner poorly clothed and fed her daughter, as well as her alleged failure to keep a clean house, and (d) that Petitioner screamed alot at her daughter. (2) In addition, again through the agency's social workers, other hearsay evidence of statements allegedly made by Lori G.'s foster parents, that Lori was concerned about whether she was going to be nurtured,

concerned about whether she was going to be fed, that she had anxiety about lack of attention and love, that she was jealous of attention given to other siblings, that Lori had difficulty separating from the foster mother when she was brought to visit Joan, that she was very insecure, that she would have angry outbursts after seeing Joan, that she had exaggerated sexual knowledge and played with Barbie and Ken dolls in a sexual way, that she would engage the dolls in oral and genital sex, that she would grab her foster brother's genitals, that she would masturbate, and that many times when they were doing ordinary affectionate things that she thought that they were going to engage in sex exhibited by her spreading her legs.

REASONS FOR GRANTING THE WRIT

I. PETITIONER WAS DENIED DUE PROCESS OF LAW UNDER THE FIFTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES

CONSTITUTION BY THE INTRODUCTION OF HEARSAY EVIDENCE WHICH SHOWED PROBLEMS THAT IN PART, FORMED THE BASIS OF THE TRIAL COURT'S DECISION TO TERMINATE HER PARENTAL RIGHTS.

A. Procedural Due Process In Parental Rights Termination Cases Requires the Exclusion of Prejudicial Hearsay Evidence.

1. Requirements of Procedural Due Process Generally.

The Fifth and Fourteenth Amendments of the United States Constitution provide that no person shall be deprived of life, liberty or property without due process of law. U.S. Const. Amends. 5, 14. Although "due process" can't be precisely or technically defined, this court has held that:

> Applying the due process clause is therefore an uncertain enterprise which must discover what "fundamental fairness" consists of in a particular situation by first considering any relevant precedents and then by assessing the several interests at stake.

Lassiter v. Department of Social Services of Durham County, North Carolina, 452 U.S. 18, 24, 101 S. Ct. 2153, 2158, 68 L. Ed. 2d 640, (1981).

Due process is flexible, and calls for such procedural protections as the particular situation demands. Morrisey v. Brewer, 408 U.S. 471,481, 92 S.Ct. 2593,2600, 33 L. Ed. 2d 484,494 (1972).

Procedural due process imposes constraints on governmental decisions which deprive individuals of "liberty" or "property" interests within the meaning of the Due Process Clause of the Fifth and Fourteenth Amendment. Mathews v. Eldridge, 424 U.S. 319,332, 96 S.Ct. 893,901, 47 L.Ed. 2d 18,31 (1976), and the fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner". Id., 424 U.S. at 333, 96 S.Ct. at 902, 47. L.Ed. 2d at 32.

Identification of the specific dictates of due process in any given case requires consideration of three distinct factors:

> First, the private interest that will be affected by the official action; Second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the government's interests, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Id., 424 U.S. at 335, 96 S.Ct. at 903, 47 L.Ed. 2d at 33.

2. Requirements of Procedural Due Process in Parental Rights Termination Cases.

a. Parental rights are a fundamental liberty interest

This court has historically recognized that freedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment. Santosky v. Kramer, 455 U.S. 745,753, 102 S.Ct. 1388,1394, 71 L.Ed.2d 599,606 (1982), and it is settled that a

parent's interest in the care, custody and management of their child is a fundamental liberty which does not evaporate because they have not been model parents or have lost temporary custody. Id. 455 at 753, 102 S.Ct. at 1394, 1395, 71 L.Ed.2d at 606.

b. Fundamental liberty interests such as parental rights must be protected from the risk of erroneous deprivation, by adherence to rigid procedural standards designed to maintain the integrity of the fact determination process.

As this court held in Santosky:

> ...persons faced with forced dissolution of their parental rights have a more critical need for procedural protections than do those resisting state intervention into ongoing family affairs. When the state moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures.

455 U.S. at 754, 102 S.Ct. at 1395, 71 L.Ed.2d at 606.

In Santosky, Id., this Court held that the liberty interest of a parent in his or her right to be a parent, is so compelling, that when the State seeks to sever the parent - child relationship, it can only do so by showing clear and convincing evidence of the need for such severance. This was based on the principle that the due process clause of the Fifth and Fourteenth Amendments require that the standard of proof in a particular type of proceeding be commensurate with the magnitude of the liberty interests involved, and that although the liberty interests involved in a parental rights termination case were as great if not greater than those in a criminal proceeding, that because in a parental rights case "imprecise" psychiatric or psychological evidence is typically used the beyond a reasonable

standard used in criminal cases could not be practically applied. Id., 455 U.S. at 768,769, 102 S.Ct. at 1402,1403, 71 L.Ed.2d 616:

In Santosky v. Kramer, in applying Eldridge's three prong due process test, this court held:

> In parental rights termination proceedings, the private interest affected is commanding; the risk of error from using a preponderance standard is substantial; and the contravening government interest favoring that standard is comparatively slight.

Id., 455 U.S. at 758, 102 S.Ct. at 1397, 71 L.Ed. 2d at 609.

Thus, it is clear because of the gravity of the liberty interest involved, that a standard of procedural safeguards that minimize the risk of an erroneous deprivation is required in a parental rights termination proceeding.

3. Prejudicial Hearsay Evidence Should Be Excluded in Parental Rights Termination Cases.

a. Hearsay evidence is presumptively unreliable and generally inadmissible.

Since the latter part of the seventeenth century, hearsay evidence has generally been held inadmissible in Anglo-American Courts. McCormick, Handbook of the Law of Evidence, Section 244 (2d Ed. 1972). The "hearsay" rule adopted by these courts by the end of the seventeenth century really was three requirements for a witness to be able to testify in court: (1) oath, (2) personal presence at trial, and (3) cross-examination. Id., at Section 245.

The oath a witness was to take was thought to be necessary because of the effects of the oath on the mind of the witness. Morgan, Hearsay Dangers and the

Application of the Hearsay Concept, 62 Harv. L. Rev. 177, 182 (1948).

However, although the witness had the stimulus of the oath, the adversary had none of the protections which the opportunity to cross-examine the witness provided. Thus, by the end of the seventeenth century, cross-examination became a sine qua non to the admissibility of testimony based on the following rationale:

> The Court and the jury must base their findings on what the witness knows and not upon what he is credulous enough to believe; the witness must make this knowledge known under sanction of fear of the consequences which falsehood will bring; and the adversary must have an opportunity to cross-examine.

Id. at 183, 184.

In modern times, it is recognized that the purpose of furnishing the safeguards of oath and cross-examination is not to aid in

the suppression of truth, but to enable them to avoid the risk that trier will be misled into mistaking the false for the true. Id. at 185.

b. The introduuction of hearsay evidence creates an intolerable risk of an erroneous deprivation that cannot withstand due process scrutiny.

As noted above, fundamental liberty interests such as parental rights must be protected from an erroneous deprivation by strict adherence to rigid procedural safeguards. Santosky, supra. As shown above, the introduction of hearsay evidence in a parental rights case, especially on issues important to the resolution of the case, degrades the truth finding process. Many states have found this to be the case,

and for good reason. See e.g., In Interest of C.W., 519 A.2d 103 (1987) (termination of parental rights can't be based on hearsay); Rusecki v. State, 56 Wis. 2d 299, 1201 N.W. 2d 832 (1972)(error to admit hearsay in juvenile adjudicatory hearing); Davis v. Trumbell Cty. Children Service Board, 240 Ohio. App. 3d, 24 O.B.R. 270, 493 N.E. 2d 1011 (1985) (hearsay can't be used as proof of allegations in juvenile proceeding). By the introduction of hearsay evidence, a fundamental liberty is being subjected to a great a risk of an erroneous deprivation.

In applying the Eldridge three prong due process test to the introduction of hearsay evidence on an important issue in a parental rights termination proceeding, it is clear that such evidence should be inadmissible. First, the private interest

involved, parental rights, are clearly a fundamental liberty; "the private interest affected is a commanding one". Santosky, 455 U.S. at 758, 102 S.Ct. at 1397, 71 L.Ed 2d at 609. The second Eldridge factor, is the risk of an erroneous deprivation of the private interest involved, and the likelihood that a higher evidentiary standard would reduce that risk. 424 U.S. at 335, 96 S.Ct. at 903, 47 L.Ed.2d. at 33. As developed above, because hearsay evidence is presumptively unreliable and the declarant is required neither to submit to oath or cross-examination, the introduction of hearsay clearly and dramatically increases the risk of erroneous deprivation. Conversely, the exclusion of hearsay would dramatically decrease such risk.

As noted in Santosky,: "At such a proceeding, numerous factors combine to magnify the risk of erroneous fact-finding. Permanent neglect proceedings employ imprecise substantive standards that have leave determinations unusually open to the subjective values of the judge." 455 U.S. at 762, 102 S.Ct. at 1399, 71 L.Ed.2d at 612.

Clearly then, the second Eldridge factor also indicates that hearsay evidence should be excluded in a parental rights termination case.

The third Eldridge factor, the State's interest, also indicates that hearsay evidence should be excluded. As noted in Santosky, the two state interests involved in a parental rights termination proceeding are: (1) an interest in promoting the

welfare of the child, and (2) a fiscal and administrative interest in reducing the burden and cost of such a proceeding:

> Since the state has an urgent interest in the welfare of the child, it shares the parent's interest in accurate and just decision at the fact-finding proceeding.

455 U.S. at 766, 102 S.Ct. at 1401, 71 L.Ed.2d at 615.

> ...the parens patriae interest favors preservation, not severance, of natural familial bonds ...the state registers no gain towards is declared goals when it separates children from the custody of fit parents.

Id., 455 U.S. at 766,767, 102 S.Ct. at 1401,1402, 71 L.Ed.2d at 615.

As is the case with a higher standard of proof, the requirement that a witness be present in court would not substantially increase litigation costs. Since the social services agency's social workers, psychologists and physicians usually are in court to testify in a parental rights proceedings anyway, the only added costs

really would be witness fees. Thus, although not as strongly as the first two Eldridge prongs, even the State interest element preponderates toward the exclusion of hearsay evidence.

In sum; applying Eldridge's three prong test, the introduction of hearsay evidence at a parental rights termination proceeding clearly is constitutionally intolerable under the due process clauses of the Fifth and Fourteenth Amendments.

B. Petitioner Was Denied Due Process of Law By the Introduction of Prejudicial Hearsay Evidence.

1. Cal. Civ. Code Section 232 Generally.

California law provides for a proceeding to terminate parental rights for various reasons such as neglect or cruelty, Cal. Civ. Code Section 232 (a)(2),

disability from drugs, Section 232 (a)(3); conviction of a felony that by its nature indicates parental unfitness, Section 232 (a)(4), mentally or developmentally ill, Section 232 (a)(5); mentally disabled; Section 232 (a)(6); and when the child has been declared a dependent child of the juvenile court, placed in out of home placement for over one year, and after the court determines that reasonable services were offered to the parent for the problems which led to the deprivation, and despite the availability of these services, the return of the child to the parent would be detrimental to the child Section 232 (a)(7). (See, Appendix A-25 for full text). Many other States have similar provisions for termination of parental rights. See e.g., O.C.G.A. Section 15-1181 (Georgia); Me.Rev.Stat.Ann.22 Section 4055

(Maine); N.Y. Social Services Law Section 384 -b (New York); Mass. Gen. Laws Ann. 19 Section 26 (Massachusets); Ohio Rev. Code Ann. Section 251.35 (Ohio);Tenn. Code Ann. Section 37-129 (Tennessee); Tex Fam-Code Ann. Setion 15.02 (Texas).

2. The Agency was Allowed to Introduce Hearsay Evidence at Petitioners Trial, Which Showed Evidence of Parental Unfitness.

As mentioned in the Statement of the Case, above, at Petitioner's trial, the Orange County Social Services Agency, hereinafter "Agency", was allowed to elicit testimony from various social workers and psychologists, allegedly showing statements made to those workers (single hearsay) and to other workers and investigators for the Agency (double or triple hearsay), regarding various problems of Joan G., that

the Agency believed demonstrated that Joan G. was an unfit mother. Some of these statements were admitted on the basis that the Agency was not offering the out of declarations to prove the truth of the matter asserted, but to show that reasonable services were offered to Joan G. by the Agency to ameliorate or cure the alleged problems which they considered made her unfit. At other times, the Agency would claim to offer the out of court declarations only for the purpose of showing the basis of a so-called experts opinion on why Joan G. was an unfit mother. However, with the exception of the original and only allegation of child molesting by Joan G., the testimony on the services offered, on the adequacy of the case plan, and on the basis of an expert's opinion served to bootstrap into evidence, testimony on Joan G.'s unfitness, when

no direct evidence on those problems was introduced at trial.

For example, one Alice Hone, a social worker for the Agency, testified that Joan's landlord, Mrs. Knapf, told her that Joan's tenancy at her house was "pretty tempestuous", and that she had asked Joan to leave her home (T.138). She also stated that she refused rent from Joan, and only accepted same when Joan brought the Sheriff out to the house (T.139).

Alice Hone also testified that she investigated Joan's employment situation, and that when she attempted to verify various jobs that Joan claimed to have had, "several of them indicated they weren't even aware of her and a couple others said that she had signed up with the registry (home care nursing) but hadn't been sent out on a case of one days duration"

T.140-145). Additionally, Ms. Hone testified that Joan told her that Ms. Knapf had written her a letter of recommendation, and that when she asked Ms. Knapf about the letter, Ms. Knapf denied same.

Throughout the termination proceeding, Joan's counsel timely objected to the evidence on the ground of hearsay, and said objections were overruled on the Agency's asserted ground that the evidence was not offered to prove the truth of the matter asserted, but only to prove sound formulation of the Agency's case plan (T.136-45).

Later on in the 232 proceeding, another Orange County Social Worker, one Cheryl Kahle testified about her contact with Joan's case. Her testimony was riddled with hearsay of the most egregious kind. For example, she testified that Joan

stated that she was working for various registries as a nurses aid where they sent her out on jobs (T.220). Kahle then stated that Mr. Hone had contacted employment agencies regarding Joan, that Mrs. Hone had been told by those agencies that Joan didn't work there, and that Mrs. Hone confronted Joan with that information (T.220,221). Ms. Kahle also went on to testify about an inquiry made about Joan's residence situation. She stated that Joan was living at a house owned by a Mrs.Knapf, that Mrs. Knapf "had tried to evict Miss Goodman, that her room was always dirty, that Mrs. Goodman was always dirty, that she screamed and yelled a lot and they did not she did not leave voluntarily" (T,225). These questions, like many of that type during the 232 hearing, were proceeded by a vigorous hearsay objection

by Joan's counsel, Mr. Donald (T.224,225). The information was allowed in by court over objection on the ground that the court should be made aware of the basis for the expert's opinion to explain the appropriate course of conduct (reasonable services)(T.225).

In addition to testimony by witnesses from Social Services about Joan's alleged unfitness as a mother, hearsay testimony was also allowed in about the mental and emotional condition of the minor at issue, Lori. For example Dae Leckie, a clinical social worker for the Agency testified that Lori's foster parents stated that: Lori was concerned about being nurtured, concerned about whether she was going to be cared about, fed, and what she was going to be fed, that she had anxiety about lack of attention and love, that she was jealous of

attention given to other siblings, that Lori had difficulty separating form the foster mother when she was brought to visit Joan, that she was very insecure, that she would have angry outbursts after seeing Joan, she had exaggerated sexual knowledge and played with Barbie and Ken dolls in a sexual way, and that she would have them engage in oral and genital sex, she would grab her foster brother's gen*tals, that she would masturbate, and that many times when they were doing ordinary affectionate things that she thought that they were going to engage in sex exhibited by spreading her legs (T.332,333). The slightest objection from Joan's counsel brought an immediate overruling by the court (T.333).

Clearly all of this evidence was highly prejudicial. Clearly any form of objection to this type of testimony was useless by

Joan's counsel, as he had tried throughout the course of the proceeding to object to this type of hearsay evidence and was overruled by the court. (See, e.g., hearsay objection by Mr. Donald on T.145). To the extent objections were not made to each individual question for which a hearsay response was elicited, one can only refer to the old maxim: "the law does not require a useless act."

Joan's image as mother and a person was poisoned by this hearsay testimony admitted on the ground that the agency had a duty to show the court reasonable conduct by the agency and the services offered Joan by the agency to eliminate certain problems. With the exception of the molest problem that was established in the 1981 300(d) hearing, all of these other problems such as instability in residency and employment, poor feeding

of the child, antisocial behavior and a dirty and unkept home, were established by this unjustifiable bootstrapping of showing the problems by showing the services offered to remedy them. Clearly the cart has been put before the horse. Clearly, Joan was denied due process of law.

3. The Fact that the Out of Court Declarations Complained of Were Allegedly Admitted For Reasons Other than to Prove the Truth of the Matter Asserted Neither Mitigated the Prejudicial Effect of the Statements Nor Justified Their Admission

As noted above, in a Section 232 proceeding, not only does the petitioner have to show that the respondent parent is "unfit", but prior to severing the parent-child relationship, the petitioner must also show that reasonable services were offered by the petitioning agency to

the respondent parent to attempt to resolve the problems which show the respondent parent's unfitness. Thus, if the parent is suffering some type of personality disorder, and the personality disorder is of sufficient magnitude for a court to find that the parent is unfit under Section 232 (a)(7), then prior to the permanent severance of the parent-child relationship, the court must determine that reasonable services were offered by the petitioning agency to cure or sufficiently resolve the personality disorder to give the parent his or her last chance to remain the parent of the subject minor. It is the personality disorder upon which the severance is based; not the services offered to cure it. Thus, if evidence of reasonable services is demonstrated, but evidence of the problem that the services

was designed for is not, there can be no severance under Section 232. Therefore, if evidence is offered that the petitioning agency gave the parent twenty gestalt therapy sessions for bipolar depressive illness, but no evidence is submitted to show that the parent is actually suffering from such illness, then termination under Section 232 should not be granted.

The above mentioned situation is analogous to the use of the co-conspirator hearsay exception allowed under Fed. R. Evid. 801(d)(2)(E):

> (d) Statements which are not hearsay. - A statement is not hearsay if -
> (1) Prior statement by witness. - the declarant testifies at the trial or hearing and is subject to cross-examination concerning this statement, and the statement is (A) inconsistent with is testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (B) consistent with his testimony and is offered to rebut an express or implied

> charge against him of recent fabrication or improper influence or motive, or (C) one of identification of a person made after perceiving him; or (2) Admission by party-opponent. - The statement is offered against a party and is (A) his own statement, in either his individual or a representative capacity or (B) a statement of which he has manifested his adoption or belief in its truth, or (C) a statement by a person authorized by him to make a statement concerning the subject, or (D) a statement by his agent or servant concerning a matter within the scope of is agency or employment, made during the existence of the relationship, or (E) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy.

Although the hearsay exception rests on a questionable foundation because it is not based on reliability but rather on an agency theory that all of the members of the conspiracy are liable for the acts of the others, statements of one conspirator can only be used against another after the predicate conspiracy has been shown to exist, independently of the statement.

"Otherwise, hearsay would lift itself by its own bootstraps to the level of competent evidence." Glasser v. United States, 315 U.S. 60,75, 62 S.Ct. 457,467, 86 L.Ed. 680,701 (1941) (co-conspirator statements inadmissible until independent evidence of conspiracy shown). See also, United States v. Alvarez-Porras, 643 F.2d 54 (2d Cir. 1981), United States v. Trotter, 529 F.2d 806 (3d Cir. 1976).

To allow the declarations of a co-conspirator into evidence without first proving the conspiracy to exist independently of the statements would simply be to bootstrap into evidence what could not be admitted directly.

As noted above, at Petitioner's trial, out of court declarations were offered into evidence, not allegedly to prove the truth of the matter asserted, but to prove things

such as whether the Agency properly developed a case plan, whether the Agency offered Petitioner reasonable services to solve the problems upon which the dependency was based, and under the subterfuge of basis of expert testimony.

As also noted above, at Petitioners trial, in none of these situations was independent evidence of the so called problems which formed the basis of the dependency shown by competent evidence.

With regard to the evidence of an adequate case plan and the basis of expert opinion, many damaging out of court declarations were admitted showing problems which indicated Petitioner's parental unfitness. Clearly this is unjustifiable bootstrapping. Petitioner could not possibly defend against so many out of court declarants.

The jury could not see their demeanor. Joan had no opportunity for cross-examination.

Declarants such as the foster parents, who were hired by the Agency to take custody of Lori clearly had a motive to falsify.

The odds are stacked enough in favor of the Agency in a parental rights termination case:

> The States ability to assemble its case almost inevitably dwarfs the parents ability to mount a defense. No predetermined limits restrict the sums an agency may spend in prosecuting a given termination proceeding. The State's attorney usually will be expert ai the issue contested and the procedures employed at the factfinding hearing, and enjoys full access to all public records concerning the family. The State may call on experts in family relations, psychology, and medicine to bolster its case. Furthermore, the primary witness at the hearing will be the agency's own professional caseworkers whom the State has employed both to investigate the family situation and to testify against the parents. Indeed, because the child is

already in agency custody, the State even has the power to shape the historical events that form the basis for termination. Santosky, 455 U.S. at 763 102SCt. at 1400, 17 L.Ed.2d at 613.

To allow hearsay evidence of case plans designed to solve certain problems, and services offered to solve those problems, without showing the problems to exist by non-hearsay evidence is simply unjustifiable and unfair. The introduction of evidence of a service offered to solve a problem circumstantially proves the existence of a problem, without ever introducing competent evidenc of such a problem.

The fact that a judge rather than a jury hears the evidence makes no difference. As stated by Professor Morgan, with regard to the basis of the hearsay

rule, it make no difference whether the hearsay is admitted in a bench or jury trial. Morgan, at 183. No judge could put the hearsay evidence presented in this case out of his mind, or limit its application.

II. PETITIONER WAS DENIED HER SIXTH AMENDMENT RIGHT TO CONFRONT THE WITNESSES AGAINST HER AT HER PARENTAL RIGHTS TERMINATION HEARING.

A. The Sixth Amendments' Confrontation Clause Applies to Parental Rights Termination Proceedings.

1. Parental Rights Termination Proceedings are Criminal In Nature

a. Criminal versus civil cases generally

It is generally accepted that the real distinction between tort and crime is the difference between the "methods by which the remedy for the wrong is pursued. A wrong for which the remedy is pursued by, and at the discretion of, the individual

injured or his representative being a tort, and a wrong for which the wrongdoer is proceeded against by the sovereign or state for the purpose of punishment being a crime." 22 C.J.S. Criminal Law Section 4.

In some types of proceedings, the line between criminal and civil proceeding is blurred. For example, a hearing on a Writ of Habeas Corpus has traditionally been and remains recognized as a "civil" proceeding. Rule 11, Rules Governing Section 2255 Proceedings for the United States District Courts. (Federal Rules of Civil Procedure apply to federal habeas corpus actions for state prisoners), even though it generally has been used to challenge the legality of a petitioner's imprisonment or incarceration. However, even "The Great Writ" has also been used to free individuals from other types of restraints.

For example, Writs of Habeas Corpus are typically used in many child custody proceedings, especially when a third party attempts to get custody of the child or attempts to free the child from its present custody situation. See generally, Oaks, Habeas Corps in the States, 32 U.Chi. L.Rev. 243, 270 (1965).

The Writ of Habeas Corpus has also been used to collaterally attack convictions underlying drivers license revocation, based on the notion that drivers license revocation was a restraint on the Petitioner's liberty. Hardison v. Martin, 254 Ga. 719 (1985). See also, Jones v. Cunningham, 371 U.S. 236,242, 83 S.Ct.373,377, 9 L.Ed.2d 285,290 (1963) (restrictions of driving privileges, choice of employment, choice of friends are all restraints on liberty).

Thus, although technically a civil remedy, habeas corpus has been used to collaterally attack traffic convictions, or to obtain custody of children. This is because when restraints on liberty interests are involved, quasi-criminal remedies are appropriate.

b. The fact that parental rights termination proceedings are technically deemed "civil proceedings" is not dispositive of the fact that such proceedings are really criminal in nature.

This court has previously held that parental rights termination proceedings are in many respects, criminal in nature.

> In New York, the factfinding stage of a state-initialed permanent neglect proceeding bears many of the indicia of a criminal trial. Cf. Lassiter v. Department of Social Services, 452 U.S., at 42-44, 101 S.Ct., at 267-2169 (first dissenting opinion); Meltzer v.

C.Buck LeCraw & Co., 402 U.S. 954,959, 91 S.Ct. 1624,1626, 29 L.Ed.2d 124 (1971)(Black, J., dissenting from denial of certiorari). See also. dissenting opinion, post, at 1406-1408 (describing procedures employed at factfinding proceeding). The Commissioner of Social Services charges the parents with permanent neglect. They are served by summons. Fam.Ct.Acct Sections 614,615,617. The factfinding hearing is conducted pursuant to formal rules of evidence. Section 624. The State, the parents, and the child are all represented by counsel. Sections 249-262. The State seeks to establish a series of historical facts about the intensity of its Agency's efforts to reunite the family, the infrequency and insubstantiality of the parents' contacts with their child, and parents' inability or unwillingness to formulate a plan for the child's future. The attorneys submit documentary evidence, and call witnesses who are subject to cross-examination. Based on all the evidence, the judge then determines whether the State has proved the statutory elements of permanent neglect by a fair preponderance of the evidence. Section 622.

Santosky, 455 U.S. at 762, 102 S.Ct. at 1399, 71 L.Ed.2d at 612.

In addition, this Court has held that:

"Some parents will have an additional interest to protect. Petitions to terminate parental rights are not uncommonly based on alleged criminal activity". Lassiter, 452 U.S. at 27, f.n.3, 101 S.Ct. at 2160, f.n.3, 68 L.Ed.2d. at 650, f.n.3.

And although parental rights termination cases do not necessarily lead to confinement upon the allegations of the plaintiff being found to be true: "the removal of a child from the parents is a penalty as great [as], if not greater, than criminal penalty." Santosky, 455 U.S. at 769, 102 S.Ct. at 1403, 71 L.Ed. 2d at 616.

2. Because Parental Rights Termination Cases Are Criminal In Nature, and Because of the Gravity of the Penalty Involved, The Confrontation Clause of the Sixth Amendment Should Apply to Those Proceedings.

U.S. Const. Amend. 6.

B. Petitioner Was Denied Her Sixth Amendment Right of Confrontation Under the United States Constitution By the Introduction of Prejudicial Hearsay Evidence At Her Trial

The Sixth Amendment Requirements of Confrontation provides, inter alia, that in every criminal prosecution, an accused has the right "to be confronted with the witnesses against him". U.S. Const. Amend. 6. As Mr. Justice Harlan once stated:

> Simply as a matter of English the clause may be read to confer nothing more than a right to meet face to face all those who appear and give evidence at trial. Since, however, an extrajudicial declare is no less a "witness", the clause is equally susceptible of being interpreted as a blanket prohibition on the use of any hearsay testimony.

California v. Green, 399 U.S. 149, 175, 90 S.Ct. 1930, 194, 26 L.Ed 2d 489, 506 (1970).

Justice Harlan concluded, however, that neither of these extremes were satisfactory, and that the confrontation clause should be developed on a case by case progression. Id. See generally, Ponsoldt and Steering, Accomplice Accusations in the Criminal Process: The Application of Sixth Amendment Tests for the Reliability of Hearsay Evidence To Probable Cause Determinations, 16 Rut. L.J. 869 (1985) (history of case by case development of confrontation clause).

This Court has stated that the Confrontation Clause and the hearsay rule "stem from the same roots", but has declined to equate the two. Dutton v. Evans, 400 U.S. 74,86, 91 S.Ct. 20,28, 27 L.Ed. 2 at 213, 225 (1970).

> We therefore believe that the Confrontation Clause issue and the

> evidentiary question must be separately analyzed, and that the sixth amendment may require the exclusion of evidence even though admissible under Fed. R. Evid. 801 (d)(2)(E).

Id.

Thus, it becomes clear, that the confrontation clause may even require exclusion of an out of court declaration that is not hearsay.

2. The Reasons Offered for the Introduction of the Out of Court Declarations At Petitioner's Trial Were Invalid, and a Subterfuge For Bootstrapping Hearsay Statements Into Evidence

As noted above, in part I, at Petitioner's trial, many highly prejudicial statements of out of court declarant's were allegedly introduced not to prove the truth of the matter asserted, but to prove things such as (1) the basis of an expert's

opinion, (2) to show the establishment of an adequate case plan, and (3) to show that reasonable services were offered to the Petitioner to help cure or ameliorate the basis of the deprivation. As also shown in part I above, it is Petitioner's position that regarding evidence offered to prove that reasonable services were offered Petitioner, that this evidence is not admissible until such time as there is introduced competent direct evidence of those problems for which the services were offered.

Secondly, with regard to evidence offered to show the development of an adequate case plan by the agency for Petitioner, that until problems forming the basis of the deprivation were shown by direct evidence, evidence of a case plan to

deal with those problems should have been inadmissible.

In both of these situations, other than evidence of the original molestation which led to the original 1981 deprivation, no problems of Joan G. which the Agency believed needed modifying before returning Lori to her home were shown by direct, competent evidence. Yet, evidence of these problems were bootstrapped into evidence. This was simply unfair and unjustifiable.

As in the case with the admission of a co-conspirator declaration, without showing that the conspiracy existed by evidence independent of the declaration, the otherwise inadmissible hearsay statements lifts itself by its own bootstraps to the level of competent evidence. Glasser v. United States, supra. This is exactly what

took place in this case, except with a different bootstrapping device.

CONCLUSION

When the State's social workers decide that a parent does not live up to their standards of parentage and decide to initiate a parental rights termination proceeding, the respondent parent has the incredible burden of attempting to defend themselves from the ultimate penalty; having their child taken from them. The parent is not given a jury trial. The trial judge in California reads the probation report authored by the Petitioning Agency. The State's witnesses are professional witnesses as well as social workers most or all of whom not only

work for the Agency, but worked directly on the parent's case. They are the very people who decided to imitate the deprivation petition. The State has unlimited resources, that only a millionare can match. The odds are stacked against the parent.

In such a proceeding, to allow out of court statements of a highly prejudicial nature to be bootstrapped into evidence, is simply fundamentally unfair and oppressive. The admission of the statements in the case at bar clearly violated the due process guaranteed by our constitution.

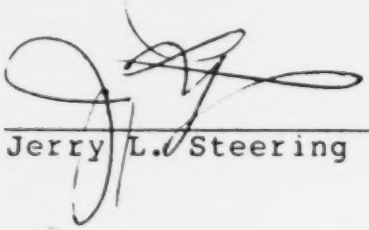
Additionally, because parental rights termination proceedings may result in a loss of liberty at least as grave as confinement, the protections of confrontation of one's accusers provided by

the Sixth Amendment should apply to these cases. To the extent the Confrontation Clause applies to these proceedings, the out of court declarations bootstrapped into evidence at Petitioner's trial also clearly violated same.

Based on all of the above and foregoing, Petitioner respectfully requests that this court grant the Writ of Certiorari in this case.

Respectfully submitted,

STEERING AND SEIDENBERG

By: 
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APPENDIX

California Court Judgments and Decrees:

Court of Appeal of the State of California
Santa Ana, California, May 12, 1987
The Honorable Court of Appeal met pursuant to adjournment. The following order was passed:

G003685. ORANGE COUNTY SOCIAL SERVICES AGENCY, Petitioner and Respondent, v. JOAN G., Respondent and Appellant

APPEAL from a judgment of the Superior Court of Orange County, Myron S. Brown, Judge. Affirmed.

Stephen S. Buckley, under appointment by the Court of Appeal, for Respondent and Appellant.

Adrian Kuyper, County Counsel and James F. Meade, Deputy County Counsel, for Petitioner and Respondent.

Philip F. Stanger for the Minor.1/

1/ The minor, through counsel, filed a brief rejecting all of Mother's arguments. The brief concludes: "The best interest of the child must be served. Although the substantial parental right is severed by the decision of the trial court, it is clearly necessary, in a circumstance such as this, where there has been clear and convincing evidence to support a finding that termination of parental rights was the least detrimental [sic] alternative for the child. The only apparent alternative was simply to continue this child in a state of inertia until the child reached the age of majority. The evidence was strongly supportive of the need for the court to act as it did."

The mother of a minor girl appeals the trial court's granting of a Civil Code section 232 petition.2/

I

The minor, born December 13, 1977, was taken into custody by the Orange County Social Services Agency in October 1981. She was declared a dependent child pursuant to Welfare and Institutions Code section 300, subdivision (d) and placed in the social service's custody for suitable placement. The petition alleged: "on or about October 13, 1981, the minor's mother was observed lying unclothed on top of the unclothed minor, her hips moving up and

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2/ All statutory references are to the Civil Code unless otherwise specified.

down, with the minor's mother insisting that the minor suck the mother's breast; further, that medical examination of the minor revealed a slightly enlarged vaginal opening, a greenish discharge and a reddened vagina."

From the fall of 1982 to the summer of 1984 various hearings were held. The child remained a dependent child. In August, the trial court, at a permanency planning hearing, held the return of the minor child to the mother would create a substantial risk of emotional detriment of the child.3/

It is from the granting of the section 232 petition, in 1986, that mother now appeals.

3/ The mother appealed this judgment, and in an unpublished opinion, we affirmed.

II

Mother argues the trial court made many erroneous evidentiary rulings which "individually and/or collectively" mandate reversal./4

As proof of the trial court error, she points to county counsel's trial brief and closing argument. But counsel's arguments cannot be construed as trial court error. Mother fails to tell us how the court erred. In other words, she points to no erroneous conduct on the part of the trial court.

4/ She alleges "Orange County Department of Social Services argued to the court that collateral estoppel must be applied to all facts alleged in the dependency petition." She further claims the county's [c]ounsel argued that even the potential of 'continued visitation' had been litigated ' at permanency planning hearing' and the issue was thereby foreclosed ....

Next, she claims damaging hearsay evidence which was introduced during testimony by social services workers Hughes, Hones and Kahles.5/ But, having read the record, we cannot find any objections to this evidence.

County counsel was very careful in his opening argument and continuing throughout the proceedings to notify the court certain evidence which might otherwise be

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5/ Specifically she refers to: 1. "Prior child abuse reports from Massachusetts and northern California; [para.] [2.] Three reports of 'child neglect' reported in Massachusetts during the year 1979; [para.] [3.] Information received from Orange County Social Services therapist Smith concerning appellant's transient life-style, the lack of appellant's progress, therapist Smith's negative prognosis, the basis for terminating the therapy, and Smith [sic] opinion that there would be no potential ability to successfully counsel with her; [para.] [4.] Orange County Social Services social worker Ackerson 'didn't feel particularly comfortable about the increased visitation';[para.] [5.] Orange County

would be introduced, not to prove the truth of the matter asserted, but to prove the

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Social Services therapist Podrow related that Appellant 'had participated in therapy on a superficial level and never had addressed the pertinent issue of the molest.' [para.]] [6.] Visitation, especially overnight visitation, should not be allowed since the principal therapeutic issue of molestation had never been addressed; [para.] [7.] Ms. Knapf related that Appellant's residence in her home 'had been pretty tempestuous; [para.] [8.] The employment agencies that appellant listed did not verify appellant's employment; [para.] [9.] The contents of an exhibit which was objected to by appellant and not admitted into evidence that involved the appellant and Miss Knapf; and [para.] [10.] Orange County Social Services therapist Podrow had asserted that it wouldn't be safe for the child to return to appellant and that he could not recommend hearsay reunification until the molest issue had been addressed; [para.] [11.] The circumstances and denial of appellant's prior child; [para.] [12.] Potential conflicts in appellant's employment history; [para.] [13.] Potential problems in the stability of appellant's residences; and [para.] [14.] The prognosis as to the molest issue was not good because while appellant admitted the actual contact with her daughter, she would not admit it was

mandates of section 232, subdivision (a)

(7). 6/ Mother's counsel never objected.

'sexual, ' but asserted that it was merely a show of affection."

6/ The relevant portion of that section provides: "that reasonable services have been provided or offered to the parents . . . . ."

County counsel advised the court: "Petitioner will offer, primarily through social workers, evidence of statements made to them by third parties, relating, inter alia, to chid neglect reports filed against Joan [G.] in Massachusetts and San Jose in 1979 and 1980, relating to Joan [G.'s] tendency to lie or distort reality, relating to Joan [G.'s] ability to obtain and keep housing and employment, and other matters Such statements will be offered, not to prove the truth of the matters recited therein, but only to show that the information was known to SSA when it took certain actions. The information disclosed to SSA is relevant to the development of the case plans recommended by SSA, to SSA's determining Joan [G.'s] compliance with case plans, to SSA's determining what services were reasonable, to SSA's determining when it was reasonable, to modify or limit visitation, and to SSA's determination of when termination of services was reasonable and referral for permanency planning was required."

Moreover, section 232, subdivision (a)(7) directs the court "[i]f the minor has been adjudged to be a dependent child . . . . . the court shall review and consider the contents of the juvenile file . . . "

All of the information is contained in that file and therefore it was, in any event, before the court. Additionally, having reviewed the trial record, we fail to note how mother was prejudiced. She effectively cross-examined the witnesses and during her testimony, was able to clarify any inconstancies or innuendos.

Finally, mother contends the court, in terminating her parental rights, erred in relying on unconfirmed prior acts rather than present circumstances. She points to social worker Hughes' testimony concerning three reports of her child neglect in

Massachusetts in 1979 and irrelevant testimony of the instability of her residences starting in 1981.

Mother originally objected to Hughes' testimony, but ultimately withdrew her objection. She cannot now complain. Contrary to her allegation, her residential history was relevant. The juvenile court instructed mother in the first case plan to maintain a stable residence. The mother's past and present life-style is relevant in determining whether her parental rights should be terminated.

Dae Lackie, a clinical social worker licensed to practice psychotherapy, was currently treating the minor. She had seen the minor, the foster parents and the mother for almost a year. Her testimony

provides evidence of the current circumstance. She diagnosed the child as having an over anxious disorder "due to Lori's unrealistic fears and worries concerning nurturing her foster mother's leaving, loss of love and attention, the worry about not having material things, not being given food, not being taken care of. Also she showed a lot of worry about things that became dirty or damaged or stained [para.] There was also a preoccupation about her behavior in concern for hurting others' feelings. She was always worried about whether she had hurt her foster mother's feelings, her foster father's feelings and especially her birth mother Joanie. [para.] She also showed an excessive need for reassurance from the foster mother and constantly sought her

approval. There were also some somatic [sic] complaints. She would get headaches and stomachaches during stressful situations and this often happened prior to visits with her birth mother. [para.] She also showed a lot of nervous habits. She was very fidgety and would often twitch and developed an eye-blinking kind of behavior. Those were basis for the anxious diagnosis."

Over the course of therapy, Lori's condition improved, but "[s]he still is extremely demanding of her foster mother and continues to worry about not getting attention, but her constant questioning about when she's going to be eating and what she's going to be eating has decreased and she rarely does that anymore [para.] She's able to separate from the mother and

trust that the foster mother will be there when she gets out of the session. She can stay in a therapy session for a whole hour without checking to see if her foster mother is still there and does not need to interrupt when I'm seeing the foster mother." Ms. Leckie opined, "it would be detrimental to remove her [and]detrimental to return Lori to the custody of her birth mother Joan [G.] . . . . In the sessions that I have had with Lori and with her foster parents, it is evidence that she is bonding well with them, is very close to her foster mother She has referred to Cathy [Y.] as mommy ever since I've seen her and has at all times referred to her birth mother as Joanie. [para.] There is also what I have seen as an extreme role reversal in her relationship as she described it with her birth mother

Joanie. Whenever she talks to me about Joanie, she says -- talks about being extremely afraid she's going to hurt Joanies feelings by telling her how she feels and he has at all times told me she wants to stay with the [Y's.] and reside with them."

III

Mother complains the evidence was insufficient to allow termination of her parental rights. She urges the court's order was deficient as a matter of law because it did not specify it was necessary in order to avert harm to the child. But the court complied with the requisite statutory mandates. The court found an award of custody to the mother would be

detrimental and placement with a nonparent was in the child's best interest. Three other special findings of detriment to the minor if returned to the mother were made by the court. Nothing else is required. (In re Angelia P. (1981) 2 Cal.3d 908, 925.)

Mother complains the severance of her visitation rights was not supported by substantial evidence. She complains it was not the least detrimental alternative and the court should have allowed visitation despite the severance of the parental relationship. But this is a different issue than raised below. In argument in the trial court, mother asked that the child be placed in permanent foster care so she could have visitation. In other words, she asked the court not to terminate her

parental rights so she could have visitation. She did not ask for visitation if her parental rights were terminated.7/

Mother alleges reasonable reunification services were not offered.8/ She maintains the court should have recommended help in the areas of housing, employment and counseling.

7/ And as noted in In re Robert J. (1982) 129 Cal.App.3d 894, termination of parental rights is a complete and final legal termination of the parental relationship. "The Legislature has apparently seen fit to endorse a policy of complete severance of ties after a judicial termination of parental rights. . . ." (In re Ruby T. (1986) 81 Cal.App.3d 1201, 1204.)

8/ Mother also argues the trial court erred in allowing custody to remain with the foster parents instead of her friend. As with so many of her issues, this was not raised below. In any event, this is an irrelevant consideration in a section 232 determination (See Welf. & Inst. Code, Section 362, subd. (a) (1).

The county was to provide services to remedy problems that led to the loss of custody. The primary reason for the dependency petition was sexual abuse. In fact, the petition does not allege inadequate housing or employment. The case plans suggested the mother show a stable and appropriate residential and employment record. And substantial evidence exists to show the county both recommended and provided adequate services.

The mother was in therapy almost continuously from the time of the filing of the petition to the time of trial in this matter. The therapists were often county employees and at all times the county was aware of the counseling. When necessary, there were joint sessions with the minor;

the county provided the child's transportation.

And the county tried to help with housing and employment. The various social workers involved offered to inspect her living conditions.

The mother, however, refused, often lying about her actual residence. She maintained she had a good job and therefore did not need any help.

Finally, the mother argues the trial court erred in terminating her parental rights because she refused to admit to being a child molester. The record, however, amply supports this conclusion. Many of the experts who testified suggested, as a first step toward mother's recovery, she must admit acts and their import. Until this time, the experts

agreed a child would not be safe in the hands of a molester.

Judgment affirmed.

Sonenshine, J.

We Concur: Wallin, Acting P.J., Crosby, J.

ORDER DENYING REVIEW

AFTER JUDGMENT BY THE COURT OF APPEAL

4th District, Division 3, No. G003685
S001310

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

July 29, 1987

In re LORI G., a person
Coming Under the Juvenile Court Law

ORANGE COUNTY SOCIAL SERVICES AGENCY,
Respondent,
Vs.
JOAN G., Appellant

Appellant's petition for review DENIED.

PANELLI
Acting Chief Justice

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

In the Matter of	)	No. AD-3720
	)	
LAURA ILENE GOODMAN,	)	ORDER DECLARING
	)	MINOR CHILD FREE
a Minor.	)	FROM PARENTAL
	)	CUSTODY AND CONTROL

The Petition of Larry M. Leaman, Director of Orange County Social Services Agency (SSA), for the order of this Court declaring Laura Ilene Goodman, minor child, free from the parental control of said minor child's parent, Joan Goodman, came on regularly to be heard on November 26, 1985 through December 20, 1985 Before December 20, 1985 before Department 16 of the above-entitled Court,, the Honorable Myron S. Brown, Judge, presiding. Adrian Kuyper, County Counsel, by James F. Meade, Deputy,

appeared as attorneys for Petitioner. Joan Goodman was present in Court and was represented by Richard Donald & Assoc. Robert Malmberg, Social Service Worker, was present in Court. Evidence both oral and documentary having been introduced and examined, and being fully advised in the premises, the Court now finds to a clear and convincing degree:

1. All of the averments contained in said petition are true;

2. Said minor child is hereby freed from the custody and control of her parent, Joan Goodman.

3. Said minor child is referred to Orange County Social Services Agency (SSA), a licensed adoption agency, for adoptive placement, pursuant to Section 239 of the Civil Code.

4. If notice of entry of this judgment is served, petitioner shall inform respondent of the right to appeal as required by the laws of the State of California.

Dated: 1-10-86

Constitutional Provisions:

U.S. Const. Amend. 5

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. Amend. 6

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and District wherein the crime shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

U.S. Const. Amend. 14

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they

reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law' nor deny to any person within its jurisdiction the equal protection of the laws.

Statutory Provisions

Cal. Civ. Code, Section 232. [Action to have minor declared free from parental custody and control: Minors affected: Agency or official instituting action]
(a) An action may be brought for the purpose of having any child under the age of 18 years declared free from the custody and control of either of both of his or her parents when the child comes within any of the following descriptions:
(1) The child has been left without provision for the child's identification by his or her parent or parents or by others or has been left by both of his or her parents or his or her sole parent in the care and custody of another for a period of six months or by one parent in the care and custody of the other parent for a period of six months or by one parent in the care and custody of the other support, or without communication from the parent or parents, with the intent on the part of the parent or parents to abandon the child. The failure to provide identification, failure to provide support, or failure to communicate shall be presumptive evidence of the intent to abandon. If the parent or parents have made only token efforts to

support or communicate with the child, the court may declare the child abandoned by the parent or parents. In those cases in which the child has been left without provision for the child's identification and the whereabouts of the parents are unknown, a petition may be filed after the 120th day following the discovery of the child and citation by publication may be commenced. The petition may not be heard until after the 180th day following the discovery of the child.

(2) Who has been neglected or cruelly treated by either or both parents, if the child has been a dependent child of the juvenile court under any subdivision of Section 300 of the Welfare and institutions Code and the parent or parents have been deprived of the child's custody for one year prior to the filing of a petition pursuant to this section. Physical custody by the parent or parents for insubstantial periods of time shall not serve to interrupt the running of the one-year period.

(3) Whose parent or parents suffer a disability because of the habitual use of alcohol, or any of the controlled substances specified in Schedules 1 to V, inclusive, of Division 10 (commencing with Section 11000) of the Health and Safety Code, except when these controlled substances are used as part of a medically prescribed plan, or are morally depraved, if the child has been a dependent child of the juvenile court, and the parent or parents have been deprived of the child's custody continuously for one year immediately prior to the filing of a petition pursuant to this section. As used

in this subdivision, "disability" means any physical or mental incapacity which renders the parent or parents unable to adequately care for and control the child. Physical custody by the parent or parents for insubstantial periods of time shall not interrupt the running of the one-year period.

(4) Whose parent or parents are convicted of a felony, if the facts of thee crime of which the parent or parents were convicted are of a nature so as to prove the unfitness of the parent or parents to have the future custody and control of the child.

(5) Whose parent or parents have been declared by a court of competent jurisdiction, wherever situated, to be developmentally disabled or mentally ill, if, in the state or country in which the parent or parents reside or are hospitalized, the Director of Mental Health or the director of Developmental Services, or their equivalent, if any, and the superintendent of the hospital of which, if any, the parent or parents are inmates or patients, certify that the parent or parents so declare to be developmentally disabled or mentally ill will not be capable of supporting or controlling the child in a proper manner.

(6) Whose parent or parents are mentally disabled and are likely to remain so in the foreseeable future. As used in this subdivision, "mentally disabled" means that a parent or parents suffer any mental incapacity or disorder which renders the parent or parents unable to adequately care for and control the child. The evidence of any two experts, each of whom shall be

either a physician and surgeon, certified either by the American Board of Psychiatry and Neurology or under Section 6750 of the Welfare and Institutions Code, or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders, shall be required to support a finding under this subdivision. If, however, the parent or parents reside in another state or in a foreign country, the evidence required by this subdivision may be supplied by the affidavits of two experts, each of whom shall be either a physician and surgeon who is a resident of that state or foreign country, and who has been certified by a medical organization or society of that state or foreign country to practice psychiatric or neurological medicine, or by a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders and who is licensed in that state or authorized to practice in that country If the rights of any parent are sought to be terminated pursuant to this subdivision, and the parent has no attorney, the court shall appoint an attorney for the parent pursuant to section 237.5, whether or not a request for the appointment is made by the parent.

(7) Who has been in out-of-home placement under the supervision of the juvenile court, the county welfare department, or other public or private licensed child-placing agency for a one-year period, if the court finds that return of the child to the child's parent or parents would be

detrimental to the child and that the parent or parents have failed during that period, and are likely to fail in the future, to maintain an adequate parental relationship with the child, which includes providing both a home and care and control for the child. If the minor has been adjudged a dependent child of the juvenile court and placed in out-of-home placement pursuant to Section 361 of the Welfare and Institutions Code, the one-year period shall be calculated from the date of the dispositional hearing at which the child was placed in out-of-home placement pursuant to that section. If the minor is in placement under the licensed child-placing agency, pursuant to a voluntary placement as described in Section 1657.4 of the Welfare and Institutions Code, the one-year period shall be calculated from the date the minor entered out-of-home placement.

The court shall make a determination that reasonable services have been provided or offered to the parents which were designed to aid thee parents to overcome the problems which led to the deprivation or continued loss of custody and that despite the availability of these services, return of the child to the parents would be detrimental to the child The probation officer or social worker currently assigned to the case of the child shall appear at the termination proceedings.

If the minor has been adjudged to be a dependent child of the court pursuant to Section 300 of the Welfare and Institutions Code, the court shall review and consider the contents of the juvenile court file in determining if the services offered we

reasonable under the circumstances.
Trial placement of the child in the physical custody of the parent or visitation of the child with the parent during the one-year period, when the trial placement or visitation does not result in permanent placement of the child with the parent, shall not serve to interrupt the running of the one-year period.
(8) A minor who has been found to be a dependent child of the juvenile court and the juvenile court has determined, pursuant to paragraph (3), (4), or (5)) of subdivision (b) of Section 361.5 of the Welfare and Institutions Code, that reunification services shall not be provided to the minor's parent or guardian.
(b) At all termination proceedings, the court shall consider the wishes of the child and shall act in the best interest of the child.
The testimony of the minor may be taken in chambers and outside the presence of the minor's parent or parents if the minor's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:
(1) The court determines that testimony in chambers is necessary to insure truthful testimony.
(2) The minor is likely to be intimidated by a formal courtroom setting.
(3) The minor is afraid to testify in front of his or her parent or parents After testimony in chambers, the parent or parents of the minor may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.
The testimony of minor also may be taken

in chambers and outside the presence of the guardian or guardians of a minor under the circumstances specified in this subdivision.
(c) A finding pursuant to this Section shall be supported by clear and convincing evidence.
(d) Section 5158 shall not apply to proceedings pursuant to this section.

Cal. Welf. & Inst. Code, Section 300. Persons subject to jurisdiction of juvenile Court

Any person under the age of 18 years who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court:
(a) Who is in need of proper and effective parental care or control and has no parent or guardian, or has no parent or guardian willing to exercise or capable of exercising care or control, or has no parent, guardian, or custodian actually exercising care or control.
(b) Who is destitute, or who is not provided with the necessities of life, or who is not provided with a home or suitable place of abode, except that no person may be adjudged a dependent child solely due to the lack of an emergency shelter for the family.
(c) Who is physically dangerous to the public because of a mental or physical deficiency, disorder, or abnormality.
(d) Whose home is an unfit place for him or her by reason of neglect, cruelty, depravity, or physical abuse of either of

his or her parents, or of his or her guardian or other person in whose custody or care he or she is.
(e) Who is under the age of three and whose home is an unfit place for him or her as a result of severe physical abuse of the minor by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the minor. For the purpose of this section, "severe physical abuse" means any of the following: any single act of abuse which causes physical trauma of sufficient severity that, if left untreated, it would cause permanent physical disfigurement, permanent physical disability, or death; any single act of sexual abuse which causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness.
(f) Who has been freed for adoption from one or both parents for 12 months by either relinquishment or termination of parental rights and for whom an interlocutory decree has not been granted pursuant to Section 224(n) of the Civil Code or an adoption petition has not been granted.
(g) It is the intention of the Legislature in enacting the amendments to subdivision (a) enacted at the 1985-86 Regular Session, to assure that courts, in making a determination pursuant to subdivision (a) shall not focus upon the fact that a parent has a physical disability. The Legislature declares that a physical disability, such

as blindness of deafness, is no bar to the raising of happy and well-adjusted children and that a court's determination pursuant to subdivision (a) should center upon whether a parent's disability prevents him or her from exercising care and control.